

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Wayne Allsup,

Case No. 3:12-cv-01969

Plaintiff

v.

ORDER OF DISMISSAL

Toledo Correctional Institution, et al.,

Defendants

BACKGROUND AND HISTORY

Pro se Plaintiff Wayne Allsup filed the above-captioned action under 42 U.S.C. § 1983 against the Toledo Correctional Institution (“ToCI”) and the Ohio State Medical Board, alleging he was not receiving proper medical care at ToCI. Plaintiff’s Complaint was very abbreviated and consisted entirely of exhibits. He did not include any allegations in the pleading itself.

One of the exhibits contained a request by Plaintiff to prison officials for treatment for a dislocated collarbone, spots on his lungs, and a spinal ailment. Plaintiff, however, also attached his medical records as exhibits which indicated that the prison medical staff performed x-rays on Plaintiff’s TSP, LSP, right hip, and both clavicles, and those tests showed nothing abnormal. These medical records not only failed to provide support for Plaintiff’s medical claims, but in fact suggested there was nothing medically wrong with him. Because there were no other factual allegations in the Complaint, and no suggestion of an actual diagnosis by a physician, there was no

basis or explanation for Plaintiff's belief that he had these ailments. The Complaint, as written, did not suggest Plaintiff was denied medical care for a serious medical condition.

Nevertheless, I was concerned that Plaintiff potentially may have a viable claim which he was not able to articulate due to his *pro se* status. I allowed Plaintiff sixty (60) days from the date of the Memorandum of Opinion and Order to file an Amended Complaint that contained a legally sufficient cause of action based on the incident described in the Original Complaint. I notified Plaintiff that if he did not file a legally sufficient Amended Complaint within the time permitted, this action would be dismissed. The Memorandum of Opinion and Order was filed February 7, 2013. More than sixty days has passed and Plaintiff has not filed an Amended Complaint. This action is therefore dismissed pursuant to 28 U.S.C. § 1915(e) for the reasons set forth in my Memorandum of Opinion and Order (Doc. No. 2). This case is closed.

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge